

February 2, 2009

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Donald R. Jackson
Date of Filing: January 5, 2009
Case Number: TFA-0284

On January 5, 2009, Donald R. Jackson filed an Appeal from a determination issued to Representative Artur Davis of Alabama on Mr. Jackson's behalf. The Oak Ridge Office (ORO) of the Department of Energy (DOE) issued the determination on November 25, 2008, in response to a request for documents that Representative Davis submitted under the Privacy Act (PA), 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. This Appeal, if granted, would require that DOE/ORO perform an additional search for responsive material and either release newly discovered documents or issue a new determination justifying their withholding.

I. Background

On October 23, 2008, Representative Davis filed a Privacy Act request with DOE/ORO on behalf of Mr. Jackson for copies of all "work, medical, and exposure records" related to Mr. Jackson, who was previously employed at the DOE Oak Ridge site. Letter from Elizabeth Dillon, Authorizing Official, to The Honorable Artur Davis (November 25, 2008) (Determination Letter). DOE/ORO sent a copy of Mr. Jackson's radiation exposure records to Representative Davis, but stated that it could not find any personnel or medical records. *Id.* In the Appeal, Mr. Jackson challenged the adequacy of the search. Letter from Mr. Jackson to Director, Office of Hearings and Appeals (January 5, 2009) (Appeal).

II. Analysis

The Privacy Act (PA) generally requires that each federal agency permit an individual to gain access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. 552a (d). The Act defines a "system of records as a group of any records under the control of any agency from which information is retrieved by the name of the individual or by

some identifying number, symbol, or other identifying particular assigned to the individual.” 5 U.S.C. § 552a (a) (5).¹

This case concerns a request for information filed under the PA. We require a search for relevant records under the PA to be conducted with the same rigor that we require for searches under the FOIA, where it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990); *see also Gary Maroney*, Case No. TFA-0267 (2008). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Doris M. Harthun*, Case No. TFA-0015 (2003).²

We contacted DOE/ORO to request additional information so that we could evaluate the search for Mr. Jackson’s records. Electronic Mail Message from Elizabeth Dillon, DOE/ORO to Valerie Vance Adeyeye, Staff Attorney, OHA (January 8, 2009). On October 28, 2008, DOE/ORO requested that Oak Ridge Associated Universities (ORAU) perform a search for Mr. Jackson’s personnel, medical and radiation exposure records. ORAU searched the Radiation Exposure Information and Reporting System (REIRS) and the DOE Radiation Exposure Monitoring System (REMS), and found responsive radiation exposure records. DOE/ORO released those documents to Representative Davis on Mr. Jackson’s behalf. However, ORAU was unable to locate any responsive personnel or medical records. DOE/ORO then requested an additional search, and ORAU expanded its search to include additional databases.³ ORAU did not find any additional responsive material.

¹ The Privacy Act adopts the FOIA definition of agency. 5 U.S.C. § 552a (a)(1). The FOIA defines “agency” as any “executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch . . . , or any independent regulatory agency.” 5 U.S.C. § 552(f).

² OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.doe.gov/foia1.asp>.

³ ORAU searched files at ORAU Human Resources and the Comparative Animal Research Laboratory (CARL) for personnel records. ORAU searched the following files for medical records: (1) ORAU Human Resources, Occupational Medicine; (2) Beryllium (BESIS)-Occupational Exposure and Worker Health (OEWH); and (3) Oak Ridge Institute for Nuclear Studies Hospital files from 1947 to 1975. In the expanded search, ORAU searched the following files for radiation exposure records: (1) ORAU Environment, Safety & Health student and employee database; and (2) Accident Registry of the Radiation Emergency Assistance Center/Training Site (REAC/TS). ORAU searched the Training and Technology files and the REAC/TS Course Registry for training records, and also searched the Science, Engineering and Education Historical Database (SEE) for research participant records prior to 1998, and the Science Education Program (SEP) records for research participants after 1998. Finally, ORAU searched OEWH work history records and OEWH National Supplemental Screening Program records. Electronic mail message from Linda Chapman, DOE/ORO, to Valerie Vance Adeyeye, OHA Staff Attorney (January 22, 2009).

III. Conclusion

After reviewing the record of this case, we find that DOE/ORO conducted a search that was adequate and reasonably calculated to uncover the requested information. The search did, in fact, locate some responsive material, and that material has been released to Mr. Jackson. Accordingly, this Appeal is denied.

It Is Therefore Ordered That:

(1) The Privacy Act Appeal filed by Donald R. Jackson on January 5, 2009, OHA Case Number TFA-0284 is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552a(g)(1). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: February 2, 2009